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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,799	10/10/2003	Daniel D. Friel SR.	FRIEL-79cip	2173

7590

04/20/2004

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EXAMINER

GRANT, ALVIN J

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/683,799	FRIEL, DANIEL D.	
	Examiner	Art Unit	
	Alvin J Grant	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-16 is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,10-12,17- 21 is/are rejected.
- 7) ☐ Claim(s) 2,5 and 7-9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, the phrase "brush-like structure" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "brush-like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-21 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-52 of copending Application No. 10023190 in view of Wieber '249. Application 10023190 does not claim a box-like structure having a single removable cover. Wieber discloses a sharpener comprising a boxlike structure and having a single removable cover so as to store the sharpening equipment therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the apparatus as claimed in Application 10023190 to have a single removable cover as taught by Wieber so as to store the equipment therein.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1, 3, 4, 6, 10, 11, 12 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Friel '679.

Friel discloses a sharpener for blades with an edge and at least one edge facet comprising: a physical structure supporting at least one abrasive surface, a displaceable guiding plate with a linear structural feature of the plate disposed toward one side of the abrasive surface, and the feature providing sliding contact with a face of the blade to

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establish the relative angle of the plane of the edge facet with the plane of the abrasive surface of the point of mutual contact as the facet is guided into contact with the abrasive surface (Fig. 9); the displaceable guiding plate the displaceable guiding plate is displaceable in a direction that when displaced maintains the axis of the linear structural feature parallel to the position of the axis before its displacement; the guiding plate is supported on the physical structure in part by roller bearings (Figs. 10 and 11); the blade is moved into contact with different areas of the extended abrasive surface (Figs. 9, 11 and 13); the edge facet comprising a physical structure to which is attached at least one extended abrasive surface and at least one displaceable guiding plate with an integral structure feature that provides linear or planar sliding or rolling contact with the face of the blade at a location on the face of the blade where the edge facet immediately adjacent to the blade face at the location is not simultaneously in contact with the abrasive surface to orient the blade and maintain the angular relationship of the edge facet with the plane of the extended abrasive surface (Fig. 9); at least one spring is attached to the displaceable knife guiding plate and to the physical structure to offer resistance to the displacement of the knife guiding plate from a rest position and to provide a restoring force to return the plate to the rest position; the spring force is adjustable (Figs. 10, 11, 13, 14 and claim 6); and a physical structure supporting at least one extended abrasive surfaced structure by a socket in the physical structure, and the end of the abrasive surfaced structure being designed with a physical angular offset so that the angular inclination of the surface of the abrasive surfaced structure is

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changed as the structure is withdrawn from the socket, rotated and reinserted into the socket (column 4, lines 1-23).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friel in view of Wieber '249.

Friel is described above. Referring to claim 17, Friel does not specifically disclose a guard. Wieber discloses a grinding machine in which a guard is provided above the grinding surface so as to protect the operator's hand. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made guards on the apparatus of Friel as taught by Wieber so as to protect the operator's hand.

Referring to claims 18-20 Friel does not disclose a box shaped support structure with a removable cover. Wieber discloses a box shaped base with a removable cover for storing the operating elements when not in use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the base of Friel's apparatus to be box shaped and to have a cover as taught by Wieber so as to store the operating elements.

Allowable Subject Matter

Claims 2, 5 and 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-16 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Grant whose telephone number is (703) 305-3315. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J Hail can be reached on (703) 308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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